



# County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA  
Chief Executive Officer

August 28, 2012

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To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
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Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: William T Fujioka  
Chief Executive Officer

## SACRAMENTO UPDATE

### Executive Summary

This memorandum contains information on the following:

- **Pursuit of County Position to Oppose AB 2298 (Solorio).** This bill would prohibit an insurer from increasing auto insurance premiums for peace officers, members of the California Highway Patrol, or firefighters involved in car accidents while on duty and operating their personal vehicle. The bill provides that the employer will assume all liability and defense of related claims, including those for which there is a dispute as to whether the employer directed the employee to use their private vehicle when the accident occurred. Therefore, consistent with policy to: 1) oppose legislation that creates new unfunded mandates unless they promote a higher priority of the Board; and 2) because AB 2298 is counter to existing policy to support proposals to mitigate the effects of joint and several liability upon public entities by limiting liability to any party to be responsible for their own proportion of damages, **the Sacramento advocates will oppose AB 2298.**
- **Status of County-Advocacy Legislation**
  - **County-sponsored AB 1736 (Smyth)** – related to closed session meetings on security measures with the Governor failed the Senate on August 27, 2012 and reconsideration was granted.

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- **Change in Advocacy Position on Legislation**
  - **County-opposed AB 542 (Allen)** – related to requirements to include an analysis of the housing element in a city or county's general plan was amended on August 24, 2012 and is currently in the Senate Rules Committee. **Based on a review of the amendments, the Sacramento advocates will remove opposition to AB 542 and take no position on this measure.**
  - **County-support-and-amend AB 1585 (Pérez)** – related to the transfer of housing functions previously performed by redevelopment agencies to the State was amended on August 24, 2012 and is currently on the Senate Floor. **Based on a review of the amendments, the Sacramento advocates will change the County's position on AB 1585 to support-if-amended.**
  - **County-support-in-concept SB 1528 (Steinberg)** – related to legislative intent to develop a mechanism to provide reimbursement for the uncompensated care for a person injured by a third party, was amended on August 24, 2012. Because the recent amendments could subject counties to increased liability in cases brought against them, unless otherwise instructed by the Board, **the County will remove its support-in-concept position, and will take no position on SB 1528 pending further analysis by this office, the Department of Health Services and County Counsel.**

Additional information on these measures is provided below.

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### **Pursuit of County Position on Legislation**

**AB 2298 (Solorio)**, which would have required the Department of Justice to study the prevalence of metal theft in California, was amended on August 24, 2012 to delete this provision. As amended, the bill would now prohibit an insurer from increasing auto insurance premiums for peace officers, members of the California Highway Patrol (CHP), or firefighters that are involved in car accidents while on duty and operating their personal vehicles. This measure also provides that the employer will assume all liability and defense of related claims, including those for which there is a dispute as to whether the employer directed the employee to use their private vehicle when the accident occurred.

Under existing law, peace officers, CHP members and firefighters are not required to report on-the-job vehicular accidents to their private automobile insurance carriers, nor are the insurance companies permitted to increase rates or refuse policy renewals as a

result of an accident in which the employee used an authorized emergency or employer-managed vehicle. AB 2298 would expand this protection to accidents in which those employees use their private cars at the direction of his or her employer, shifting liability for resulting damages and injuries to the employers. If there is a question as to whether the peace officer or firefighter was acting under employer direction at the time of the accident, the employer assumes all liability until a determination is made.

The Chief Executive Office Risk Management Branch indicates that the County already has in place a permittee driver program that covers all employees who are designated by their respective departments. The protections under this program include sworn personnel who drive their personal vehicles as part of their duties. In addition to providing mileage reimbursement, the County, which is self-insured, assumes full liability and responsibility for accidents that occur during the "course and scope" of duty, making this legislation unnecessary.

County Counsel indicates that AB 2298 shifts additional liability to the County, creating a duty to indemnify a covered employee regardless of the circumstances of an accident, and undermining the County's ability to deny or accept a request for defense and indemnity. County Counsel also notes that this measure would likely lead to taxing litigation in cases where there is a dispute as to whether the employee was on duty at the time of the accident, particularly since the bill does not indicate if the employer's own finding would be the determinative factor, or if the employer must convince an insurer or third party of the validity of its determination. Subsequently, in cases where it is determined that an employee was not in "course and scope", the County would need to seek legal recourse to attain reimbursement from the private insurer.

The Chief Executive Office Risk Management Branch indicates that this measure would also increase workers' compensation liability, denying agencies the ability to determine whether or not the employee was working at the time of claimed injury, a safeguard that is currently allowed under the workers' compensation system.

The Chief Executive Office Risk Management Branch and this office oppose AB 2298. Therefore, consistent with policy to: 1) oppose legislation that creates new unfunded mandates unless they promote a higher priority of the Board; and 2) because AB 2298 is counter to existing policy to support proposals to mitigate the effects of joint and several liability upon public entities by limiting liability to any party to be responsible for their own proportion of damages, **the Sacramento advocates will oppose AB 2298.**

AB 2298 is substantially similar to AB 2151 of 2010 by Assembly member Torres which was vetoed by Governor Schwarzenegger, who wrote in his veto message, "While there may be reasons for State and local entities to pay the costs of automobile accidents

while employees are responding to emergency situations in their private vehicles, this measure would require indemnification in all situations regardless of the driver's fault, which is unwarranted. Moreover, the Internal Revenue Service established mileage reimbursement rate regulations already covers costs for insurance for employees that use their private vehicles for work purposes."

As amended on August 24, 2012, AB 2298 does not have any opposition or support on file.

AB 2298 is currently on the Senate Floor for consideration.

#### **Status of County-Advocacy Legislation**

**County-sponsored AB 1736 (Smyth)**, which as amended on August 21, 2012, would authorize the Governor to meet with the Board of Supervisors in closed session over security matters, failed to pass the Senate by a vote of 16 to 20 on August 27, 2012. **This measure was granted reconsideration.**

#### **Change in County Position on Legislation**

**County-opposed AB 542 (Ma)**, which would have modified the requirements that a city or county must meet in preparing the housing element of its general plan, was amended on August 24, 2012. As currently amended, AB 542 would update the Planning and Zoning Law to remove references to redevelopment agencies and instead update the provisions to refer to successor housing agencies.

All the previous provisions related to modifying the analysis required for a city or county's housing element have been deleted. The Community Development Commission and the Department of Regional Planning have reviewed the current amendments and recommend that the County remove its opposition to AB 542 as the County would not be directly affected by its provisions, and this office concurs. **Therefore, the Sacramento advocates will remove opposition to AB 542 and take no position on this measure.**

AB 542 is currently in the Senate Rules Committee.

**County-support-and-amend AB 1585 (Pérez)**, which would allow a local housing authority to transfer housing functions assigned by a city or county of a former redevelopment agency (RDA) to the California Department of Housing and Community Development, was amended on August 24, 2012. As currently amended, AB 1585 would now designate which agency a former RDA's housing functions would be transferred to in the event that the sponsoring community elects not to assume those

functions. The previous language, which provided a local housing authority the option to decline a former redevelopment agency's request to transfer its housing assets to a public housing agency, has been deleted.

Specifically, the bill now requires that an agency assuming the former RDA's housing functions establish a Low and Moderate Income Housing Asset Fund, a portion of which can be used to fund administrative and planning costs associated with assumption of the former RDA's housing functions (as allowed by the Community Redevelopment Law). The Community Development Commission and this office have reviewed the bill's amendments and recommend that the County change its position on AB 1585 from support-and-amend to support-if-amended to re-instate the provisions allowing a local housing authority to decline the assignment of a former RDA's housing functions. **Therefore, the Sacramento advocates will change the County's position on AB 1585 to support-if-amended to re-instate the provisions to allow local housing authorities to decline assignment of a former RDA's housing functions.**

AB 1585 is currently on the Senate Floor for consideration.

**County-support-in-concept SB 1528 (Steinberg)**, which stated legislative intent to develop a mechanism to provide reimbursement for the uncompensated care for persons, including Medi-Cal patients, who were injured by a third party was amended on August 24, 2012. As amended, the bill would now provide that an injured person whose health care is provided through a public or private capitated health care service plan shall be entitled to recover as damages the reasonable and necessary value of medical services.

Because the recent amendments could subject counties to increased liability in cases brought against them where the plaintiff is seeking damages, unless otherwise instructed by the Board, **the County will remove its support-in-concept position, and will take no position on SB 1528 pending further analysis by this office, the Department of Health Services and County Counsel.**

The bill passed out of the Assembly Judiciary Committee on August 28, 2012 by a vote of 6 to 3, and now proceeds to the Assembly Floor.

We will continue to keep you advised.

WTF:RA  
MR:KA:IGEA:ma

c: All Department Heads  
Legislative Strategist